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Highway Fund Eligibility at the Department of Public Safety — an Analysis of Select Departmental Activities, 2007

Maine State Legislature

Office of Program Evaluation and Government Accountability

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Analytical
Study

FINAL
REPORT



Highway Fund Eligibility at the Department of Public Safety — an Analysis of Select Departmental Activities

Report No. SR-HFUPS-06

a report to the
Government Oversight Committee
from the
Office of Program Evaluation & Government Accountability
of the Maine State Legislature

February
2007

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ABOUT OPEGA & THE GOVERNMENT OVERSIGHT COMMITTEE

The Office of Program Evaluation and Government Accountability (OPEGA) was created by statute in 2003 to assist the Legislature in its oversight role by providing independent reviews of the agencies and programs of State Government. The Office began operation in January 2005. Oversight is an essential function because legislators need to know if current laws and appropriations are achieving intended results.

Although the Maine Legislature has always conducted budget reviews and legislative studies, until OPEGA, the Legislature had no independent staff unit with sufficient resources and authority to evaluate the efficiency and effectiveness of Maine government. The joint legislative Government Oversight Committee (GOC) was established as a bipartisan committee to oversee OPEGA's activities.

OPEGA's reviews are performed at the direction of the Government Oversight Committee. Legislators, committees, or members of the public should make their requests for reviews to members of the Committee or OPEGA directly.

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Funding Sources

Budgetary Appropriation Programs

DPS Organizational Units



See reverse for detailed activities of MSP units.

MSP Organizational Units	Primary Activities (during SFY 2005 & 2006)
* MSP Administration	Overseeing the operations of the Maine State Police
* Troops A, C, D, E, F, J	Patrolling roads, responding to citizen calls, conducting traffic and criminal investigations, operating on special teams (for example: bomb team, dive team, or K-9 team)
Troop B-Turnpike Enforcement	Enforcing traffic laws on the Maine Turnpike
Troop K-Commercial Vehicle Enforcement	Enforcing State size and weight laws for commercial vehicles
* Criminal Investigation Divisions I, II, III	Investigating major and complex crimes including homicides, kidnapping, child abuse, burglaries, aggravated assaults, and missing persons
* Fleet Maintenance	Purchasing, maintaining, and disposing of the MSP fleet of vehicles
Traffic Safety	Coordinating focused traffic enforcement efforts throughout the State, regulating motor vehicle inspection stations, performing air search and rescue, providing aerial photography of crash or crime scenes, investigating automobile accidents, performing accident reconstruction
* State Bureau of Identification	Maintaining criminal records for the State of Maine, responding to public and government criminal history requests, storing fingerprint records, maintaining the State's sex offender registry
* Special Services	Overseeing the special teams (including bomb team, K-9 team, crisis negotiations team, tactical team, and dive team), providing criminal intelligence services, facilitating ongoing professional training for MSP personnel, coordinating all homeland security for the DPS, managing supplies required for uniformed MSP personnel
* Management Information Systems	Providing information systems support for all MSP functions
* Crime Lab	Examining and analyzing physical evidence from crash and crime scenes, performing forensic exams of seized computers, performing DNA analysis on material recovered from crash or crime scenes, identifying and processing fingerprints or other impressions left at crash or crime scenes, processing film associated with investigations
* Communications	Providing emergency and business communications for a number of entities (including MSP) via dispatch, managing FBI Uniform Crime Reporting (UCR) statistics for Maine
* Special Investigations	Licensing and enforcing laws regarding non-profit gaming and concealed firearms permits, licensing manufacturers, distributors, and retailers of alcohol, enforcing State liquor license laws, regulating gambling activities at the Hollywood Slots facility, protecting Maine's Governor and any other dignitaries requiring protection
* Special Projects	Overseeing any special projects as needed, implementing an internal quality assurance process
* Access Integrity Unit (AIU)	Providing access, support, and training for all State and federal law enforcement databases

Table of Contents

EXECUTIVE SUMMARY	
Introduction	1
Results of Analysis	2
Conclusions	2
FULL REPORT	
Introduction	4
Methods	6
Analysis: Maine State Police	10
Brief History and Current Activities	10
Current Organization, Expenditures, and Staffing	12
The State Police Appropriation Program	13
Analysis of Activities Funded by the State Police Appropriation Program	14
How Other States Fund Their State Police Forces	16
Analysis: Bureau of Highway Safety	17
Brief History and Current Activities	17
Current Organization, Expenditures, and Staffing	18
Analysis of Activities	19
Analysis: Department of Public Safety Administration	20
Brief History and Current Activities	20
Current Organization, Expenditures, and Staffing	21
Analysis of Activities	22
Conclusions	23
Acknowledgements	24
APPENDICES	
A. Full Text of Opinions from the Maine Attorney General	25

EXECUTIVE SUMMARY

Highway Fund Eligibility at the Department of Public Safety – an Analysis of Select Departmental Activities

Introduction

The Maine State Legislature’s Office of Program Evaluation and Government Accountability (OPEGA) has completed a study of Highway Fund eligibility of select activities at the Department of Public Safety (DPS). This study was originally requested by the Legislature’s Joint Standing Committee on Transportation in the spring of 2005, and was subsequently approved by the Government Oversight Committee and added to OPEGA’s annual work plan.

OPEGA’s purpose in performing this study was to determine which DPS activities are eligible to be paid from the State’s Highway Fund (HF). The review did not analyze all DPS activities, instead focusing only on those funded by three specific legislative appropriation programs:

1. State Police appropriation program (0291)—currently receives approximately 65% of its State funds from the Highway Fund;
2. Bureau of Highway Safety appropriation program (0457)—currently receives 100% of its State funds from a combination of the Highway Fund and Special Revenue Funds; and,
3. DPS Administration appropriation program (0088)—currently receives Highway Fund monies to support particular positions, representing approximately 64% of its total General and Highway fund appropriations.

It is critical to recognize that the Legislature appropriates to “programs” that are generally abstract funding mechanisms. Appropriation programs do not directly correspond to Executive Branch activities, programs or units. Thus, as of State fiscal year 2006, DPS was funded through a total of 18 different appropriation programs, the names of which can be a source of confusion—for example, the state police appropriation program (0291) does not fund the entire Bureau of Maine State Police, only a portion of it. See the first page of this report for an overview of the relationship between appropriation programs and organizational units in the DPS.

Based primarily on State fiscal year 2005 data, OPEGA sought to answer three questions with regard to these programs:

- A. Which activities that they fund are eligible to be paid from the State’s Highway Fund?

This study’s purpose was to determine which DPS activities were eligible to be paid from the State’s Highway Fund.

The study focused on the activities funded by three specific appropriation programs: 0088, 0291, and 0457.

- B. What cost allocation method would best apply Highway Fund eligibility requirements?
- C. What estimated changes in allocation between the funds would result from applying alternative allocation methods?

Results of Analysis

OPEGA gathered and analyzed SFY 2005 and 2006 activity and expenditure data for the three appropriation programs included in the scope of this review. This analysis was performed to estimate what percent of the activities funded by each appropriation program were eligible to be paid from the Highway Fund. No conclusions were drawn about how much Highway Fund money the programs should be receiving now, or in the future.

For each appropriation program, OPEGA developed a range of eligible activities based on two selected interpretations of Maine's constitutional restriction that Highway Fund monies be spent only for, among other things, "state enforcement of traffic laws". OPEGA's estimates are as follows:

- State Police appropriation program – OPEGA estimates that between 17% and 34% of the costs associated with activities funded by the state police appropriation program are eligible to be paid from the HF. Approximately 65% of this program's State funding currently comes from the HF.
- Bureau of Highway Safety appropriation program – This program currently receives 100% of its non-Special Revenue State funds from HF. OPEGA estimates that the program is eligible to receive 82%-100% of its State funding from the HF.
- DPS Administration appropriation program – This program currently receives approximately 64% of its non-Special Revenue State funds from the HF, and OPEGA estimates that the program is eligible to receive between 29% and 41%.

A detailed explanation of the estimates for each of these three programs is included in the text of the full report.

Conclusions

In the absence of a clear definition of HF eligibility and reliable activity data, it is not possible to fully and exactly determine which DPS activities are eligible to be paid from the State's Highway Fund.

It is not possible, at this time, to fully and exactly determine which DPS activities and associated costs are eligible to be paid from the State's Highway Fund. OPEGA analyzed available data to arrive at reasonable estimates of HF eligibility, but no decisive eligibility determination or supporting cost allocation can be prepared without two currently unavailable elements:

1. an operational definition of Highway Fund eligibility, and
2. activity data that is closely linked, or can easily be linked, with financial data.

Without a clear definition of HF eligibility and reliable activity data, HF allocations to the DPS will likely continue to be unrelated to the Department's actual activities.

Implementing managerial cost accounting would make the costs of specific DPS activities transparent and could significantly simplify the process of identifying the amount of HF monies that should be allocated to those activities.

The absence of these two critical elements has led to long-standing uncertainty in DPS and the Legislature about which departmental activities are eligible to be attributed to the Highway Fund. If these elements are not put in place, the question of which Departmental activities should be supported by the HF will likely continue to be argued well into the future, with HF allocations to the Department continuing to be unrelated to the actual activities performed. A long term solution to this issue would require creating an operational definition of HF eligibility and implementing a managerial cost accounting model at DPS to make activity-based cost data continuously available.

The goal of managerial cost accounting is to accumulate, measure, analyze, interpret, and report cost information that can be useful to internal and external parties interested in how an organization uses its resources to meet its objectives. The cost information that would result from such an approach would make the costs of specific DPS activities transparent and could significantly simplify the process of identifying the amount of Highway Fund monies that should be allocated to those activities. OPEGA has observed there may also be other State agencies which are not currently collecting this type of cost information and which perhaps could benefit from a move toward cost accounting.

Implementation of a cost accounting model would represent a significant effort, requiring that appropriation programs be clearly linked to activities, that account coding be developed to link costs to activities, and that associated program activity data be collected. Full implementation of these accounting practices would take considerable time, (though they could be phased in incrementally), but would provide for marked improvements in transparency and accountability.

FULL REPORT

Highway Fund Eligibility at the Department of Public Safety – an Analysis of Select Departmental Activities

Introduction

The 122nd Legislature's Joint Standing Committee on Transportation requested this study.

This study's purpose was to determine which DPS activities were eligible to be paid from the HF.

State HF monies paid for a little less than 50% of all DPS expenditures in SFY 2005 and 2006.

The Maine State Legislature's Office of Program Evaluation and Government Accountability (OPEGA) has completed a study of Highway Fund (HF) eligibility of select activities at the Department of Public Safety. This study was originally requested by the Legislature's Joint Standing Committee on Transportation in the spring of 2005, and was subsequently approved by the Government Oversight Committee and added to OPEGA's annual work plan. OPEGA conducted this study in accordance with MRSA Title 3, Ch. 37, §§991-997 and the Government Auditing Standards set forth by the United States Government Accountability Office (GAO).

Department of Public Safety expenditures totaled \$70,175,785 and \$75,965,788 respectively for State fiscal years 2005 and 2006. These expenditures were paid through a combination of the State General Fund, State Highway Fund, State Special Revenue Funds, and Federal Expenditure Funds (see Table 1 for detail). This OPEGA study attempted to determine which DPS activities were eligible to be paid from the State's Highway Fund.

Table 1. Total DPS Expenditures by Fund

Fund		SFY 2005	SFY 2006
010	State General Fund	\$18,573,930	\$19,471,038
012	State Highway Fund	32,460,208	35,452,644
013	Federal Expenditure Fund	7,582,058	7,776,281
014	State Special Revenue Funds	11,504,589	12,487,005
018	General Bond Fund–Arbitrage	55,000	778,820
Total for all funds		\$70,175,785	\$75,965,788

source: State MFASIS Data Warehouse

It is critical to recognize that the Legislature appropriates to “programs” that are generally abstract funding mechanisms. Appropriation programs do not directly correspond to Executive Branch activities, programs or units. As of SFY 2006, DPS was funded through a total of 18 different appropriation programs, the names of which can be a source of confusion—for example, the state police appropriation program (0291) does not fund the entire Bureau of Maine State Police, only a portion of it. (See Table 2 for an illustration of how the appropriation programs and operational units for DPS relate.)

This study did not review all DPS activities, but focused on the activities funded by three specific appropriation programs: 0088, 0291, and 0457.

This study focused only on three specific DPS legislative appropriation programs that receive Highway Fund monies:

1. State Police appropriation program (0291)—currently receives approximately 65% of its State funds from the Highway Fund;
2. Bureau of Highway Safety appropriation program (0457)—currently receives 100% of its State funds from a combination of the Highway Fund and Special Revenue Fund; and,
3. DPS Administration appropriation program (0088)—currently receives Highway Fund monies to support particular positions, representing approximately 64% of its total General and Highway Fund appropriations.

These three legislative appropriation programs had combined expenditures of \$47,465,564 in SFY 2005, representing approximately 67% of total DPS expenditures. Of the total expenditures for these three appropriation programs, \$26,365,319 were paid from the Highway Fund. This represents approximately 80% of all DPS Highway Fund expenditures for SFY 2005.

Table 2. Relationship Between DPS Operational Units and Appropriation Programs – SFY 2005

Executive Branch Operational Units	Legislative Appropriation Programs	
DPS Administration	0088	ADMINISTRATION - PUBLIC SAFETY
Bureau of Highway Safety	0457	HIGHWAY SAFETY DPS
Maine State Police	0291	STATE POLICE
	0293	LIQUOR ENFORCEMENT
	0329	MOTOR VEHICLE INSPECTION
	0546	TRAFFIC SAFETY
	0547	TURNPIKE ENFORCEMENT
	0712	LICENSING AND ENFORCEMENT - PUBLIC SAFETY
	0715	TRAFFIC SAFETY - COMMERCIAL VEHICLE ENFORCEMENT
	0930	FINGERPRINT AND BACKGROUND INFORMATION
	0981	STATE POLICE - SUPPORT
	0992	BACKGROUND CHECKS - CERTIFIED NURSING ASSISTANTS
State Fire Marshal	0327	FIRE MARSHAL - OFFICE OF
	0964	FHM - FIRE MARSHAL
Criminal Justice Academy	0290	CRIMINAL JUSTICE ACADEMY
Emergency Medical Service	0485	EMERGENCY MEDICAL SERVICES
Maine Drug Enforcement Agency	0388	DRUG ENFORCEMENT AGENCY
Gambling Control Unit	Z002	GAMBLING CONTROL BOARD
Capitol Security	0101	CAPITOL SECURITY - BUREAU OF

source: State MFASIS Data Warehouse

OPEGA's purpose in performing this study was to answer three questions with regard to the Maine State Police, Bureau of Highway Safety, and DPS Administration appropriation programs:

The study focused primarily on activities and expenditures from State fiscal years 2005 and 2006.

- A. Which activities that they fund are eligible to be paid from the State's Highway Fund?
- B. What cost allocation method would best apply Highway Fund eligibility requirements?
- C. What estimated changes in allocation between the funds would result from applying alternative allocation methods?

The study focused primarily on the expenditures and activities of State fiscal year 2005, but 2006 data was also considered and analyzed as appropriate.

Methods

OPEGA began this review with the intention of executing a traditional, activity-based cost allocation analysis. We were not able to do this, however, for two specific reasons:

1. No clear operational definition of Highway Fund eligibility exists.
2. Activity data is often unavailable or unreliable.

We preface our discussion of actions taken to accomplish this review with descriptions of these conditions.

Absence of an Operational Definition of Highway Fund Eligibility

Allocation of Highway Fund money is restricted by Article IX of the Maine Constitution and by 23 MRSA §1653. Article IX of the Constitution specifically states that Highway Fund revenues should be spent

Allocation of HF money is restricted by Article IX of the Maine Constitution and by 23 MRSA §1653. However, exactly which activities can be paid from the HF is not completely clear.

“solely for cost of administration, statutory refunds and adjustments, payment of debts and liabilities incurred in construction and reconstruction of highways and bridges, the cost of construction, reconstruction, maintenance and repair of public highways and bridges under the direction and supervision of a state department having jurisdiction over such highways and bridges and *expense for state enforcement of traffic laws and shall not be diverted for any purpose.*” (emphasis added)

However, Maine statute specifies that after highway and bridge construction bond provisions have been met, the remainder of the Highway Fund money may be expended only for:

1. Registration and licensing. For the cost of registering motor vehicles and licensing operators thereof;
2. *State Police. For maintenance of the State Police;* (emphasis added)
3. Administration of office. For administration of the office and duties of the department;
4. Administration of fuel tax. For administration of the tax on internal combustion engine fuel;
5. Rebates. For payment of rebates on said tax;
6. Highways and bridges. For the improvement, construction and maintenance of highways and bridges; and,
7. Snow guards. For snow guards or removal as provided by statute.

AG's opinions conclude that HF revenues may fund only those State Police costs associated with "enforcement of the traffic laws."

OPEGA sought clarification from the Attorney General's (AG's) Office concerning Highway Fund eligibility of public safety expenses, and was provided some prior AG's opinions regarding appropriate uses of the Highway Fund to support State programs.¹ The opinions conclude that "Highway Fund revenues may fund only that portion of the State Police budget which is utilized for the enforcement of the traffic laws."² Furthermore, they state that the Legislature is constitutionally obligated to make a good faith inquiry and estimate of the portion of State program expenses attributable to this purpose, and then to allocate Highway Fund monies to those programs in accordance with its factual findings.

Although the AG's opinions are informative, they do not refine the constitutional or statutory provisions to the level of an operational definition. An operational definition of "enforcement of traffic laws" would specify the individual activities or operations of the Maine State Government that are deemed to qualify as state enforcement of traffic laws. In order to facilitate objective analysis of Highway Fund (HF) eligible costs, an operational definition would need to address two specific questions:

1. What types of activities are reasonably considered enforcement activities?
2. Which laws are considered traffic laws?

While answers to these questions may seem self-evident, OPEGA found that there are diverse interpretations in use by various parties of interest.

There is currently no statewide consensus regarding what types of activities are considered "enforcement activities."

There is no single, generally accepted definition of enforcement. The term may be considered narrowly to include only patrol activities carried out by state police troopers, or more broadly to include activities aimed at educating the public about the laws in question and encouraging compliance. For example, the use of rollover machines to convince drivers of the importance of seatbelt usage would likely fit the broad definition of enforcement, and therefore be considered eligible for HF money, but would not qualify under the narrow definition.

¹ See Appendix A for the full text of all three opinions.

² Op. Me. Att'y Gen. 81-16.

Maine has Titles 29 and 29-A concerning Motor Vehicles, but there is no body of law in statute entitled “traffic law.”

Similarly, there is currently no body of law in Maine statute called “traffic law,” leaving this phrase open to debate.³ Traffic laws could be interpreted as only those laws regarding the operation of vehicles on Maine’s public roadways, or could be regarded more broadly to include all laws involving vehicles and roads. While the broader definition makes costs incurred in locating stolen vehicles, for instance, eligible for payment from the Highway Fund, the narrower definition arguably would not.

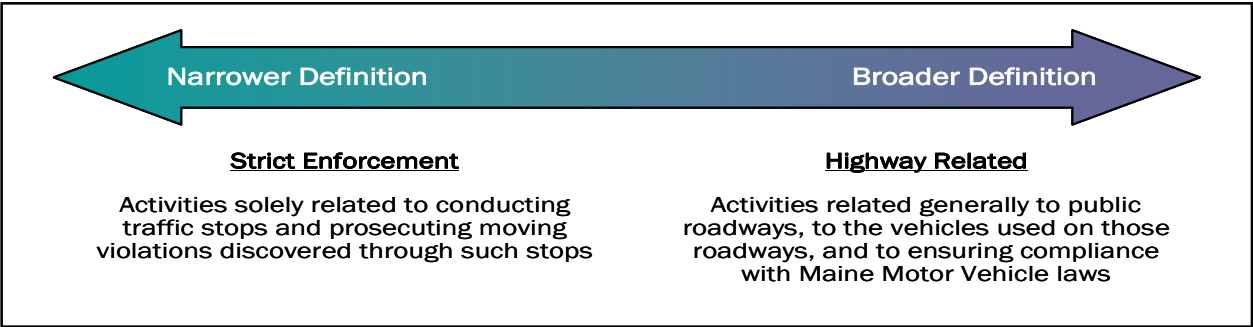
Titles 29 & 29-A of the Maine Revised Statutes concern Motor Vehicles.

OPEGA used two possible interpretations of “state enforcement of traffic laws” to guide our data collection and analysis.

Faced with the absence of a clear operational definition of Highway Fund eligibility, OPEGA selected two possible interpretations of “state enforcement of traffic laws,” that in OPEGA’s opinion represent the two most extreme, though still reasonable, interpretations of the constitutional language. We used the two definitions to perform the data collection and analysis required for this review and will refer to them throughout this report as:

- 1. Strict Enforcement — activities solely related to conducting traffic stops and prosecuting moving violations discovered through such stops.
- 2. Highway Related — activities related generally to public roadways, to the vehicles used on those roadways, and to ensuring compliance with Maine Motor Vehicle Law.

Figure 1. OPEGA’s Selected Interpretations of “State Enforcement of Traffic Laws”



OPEGA selected these two extreme definitions intentionally, in order to provide a reasonable range within which readers can compare their own preferred definitions and associated costs.

Unavailable or Unreliable Activity Data

The second factor that prevented OPEGA from performing a rigorous cost allocation analysis was the lack of reliable activity data, specifically regarding the

3 Maine does have a section of statute entitled “Motor Vehicle Law” (Title 29-A). The laws included in that section fall within the broader definition of traffic law.

Reliable activity data was not readily available at the Maine State Police (MSP).

MSP has new initiatives underway to begin collecting useful activity data.

Maine State Police. A standard activity-based cost allocation would use activity data to identify the total costs or resource usage associated with individual activities. Without reliable activity data, this study was severely limited in the level of accuracy that could be achieved in connecting activities to their full costs.

OPEGA noted that MSP did not have a history of regularly collecting or using activity data. However, current State Police leadership has recognized the necessity of activity data in being able to show what has been accomplished with taxpayer resources. There are new initiatives underway within the MSP to begin collecting activity data, but these initiatives were too new to provide useful information about the period of study for this review (SFY 2005 and 2006).

Most of the activity data that was available for SFY 2005 was deemed unreliable by OPEGA because data collection had not been standardized or controlled adequately. For example, state police troopers had to record the number of hours worked on “patrol,” but they had not been given a standard definition of the activities that were considered “patrol.” This left them to form their own interpretations: some recorded only time spent seeking and stopping speeders, others recorded all time spent traveling between complaints, and some avoided recording any “patrol” time at all because they didn’t know what it meant. This rendered the patrol data meaningless for the purposes of this review.

Specific Actions Taken to Accomplish this Review

Despite the issues noted, OPEGA was able to develop eligibility estimates that may shed light on future discussions of Highway Fund allocations to the three appropriation programs included in this review. To arrive at reasonable estimates, OPEGA:

- identified the individual functional units and their expenditures;
- conducted interviews and focus groups to become familiar with the activities funded by each appropriation program;
- reviewed all provided activity, expenditure, and FTE (full-time equivalent) data;⁴
- worked with DPS contacts to identify appropriate data sources that could be used for estimating an allocation; and,
- allocated expenditures based on the selected data sources.

Additional work performed to develop the context for this report included:

- interviews with staff from the legislative Office of Fiscal & Program Review (OFPR) and the legislative Office of Policy & Legal Analysis (OPLA);

OPEGA’s methods for this study included interviews, focus groups, data analysis, literature research, and a survey of other states.

4 OPEGA noted some irregularities in expenditure and FTE data, and reported these irregularities to both DPS and the Office of the State Controller (OSC). OSC’s Internal Audit team researched the irregularities and provided reasonable explanations.

OPEGA focused specifically on those activities currently being supported by the State's Highway and/or General Funds.

- research conducted with the assistance of the Law and Legislative Reference Library;
- survey of other states; and,
- review of other states' reports.

Although all three of the appropriation programs within the scope of this review received some level of federal, or other non-state funding, OPEGA focused specifically on those activities currently being supported by the State's Highway and/or General Funds. Activities supported by federal funds were not considered for Highway Fund eligibility.

Analysis: Maine State Police

Brief History and Current Activities

Over the last 70 years, the Maine State Police has undergone significant organizational and functional change in response to evolution in Maine's laws, social concerns, and demographics.

The Maine State Police has its roots in the State Highway Police, first established under the State Highway Commission in 1921 with just 34 personnel. The State Highway Police were initially tasked with enforcing motor vehicle laws and collecting automobile registration and driver's license fees. They were moved under the supervision of the Secretary of State a few years before their name was officially changed to the Maine State Police by the Legislature in 1935.

Over the next 70 years, the Bureau of Maine State Police (MSP) would undergo significant organizational and functional change in response to the State of Maine's growing body of laws, evolving social concerns, and increasing population. Their once straightforward mission of collecting driving-related fees and enforcing motor vehicle laws has changed considerably. While they are no longer responsible for the collection of driver's license and auto registration fees, their responsibilities have expanded to include a wide range of activities:

- patrolling rural areas of Maine without organized police departments for the purpose of preventing and investigating criminal activity;
- enforcing traffic safety laws in rural areas, and on the Maine Turnpike and Interstate System;
- overseeing the Motor Vehicle Inspection Program and enforcing Maine's Commercial Motor Vehicle laws and rules;
- investigating homicides, child abuse cases, and other violent crimes;
- providing crime laboratory services to all law enforcement agencies throughout the State;
- acting as a repository for criminal history and records information;
- providing specialized administrative, licensing, and enforcement activities (such as the State's liquor licensing program); and

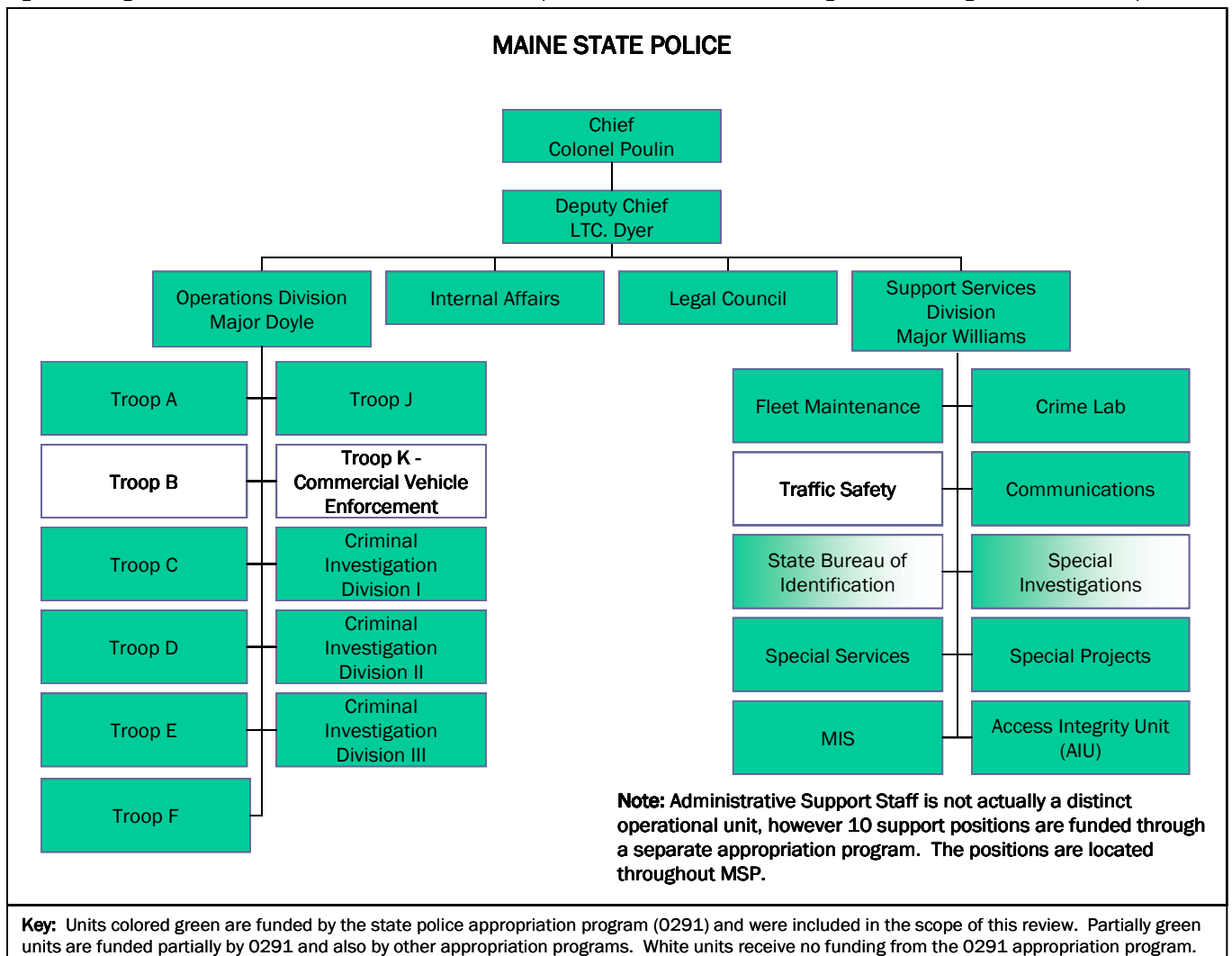
MSP now provides a broad range of services for Maine's citizens.

- ensuring the security of the Governor and his family on a 24-hour basis.

Maine State Police activities are inherently response-oriented and highly dependent on the current needs of the State's citizens. Active state troopers describe multifaceted workdays in which they may find themselves patrolling a section of roads to begin with, then responding to a smashed mailbox complaint, next being called to participate in an underwater recovery effort, and finally assisting in a homeland security event before stopping on the way home to help at the scene of an auto accident.

In order to successfully accomplish this broad range of activities, the MSP has needed to develop a host of specialized support functions. These support functions, housed under the Bureau's Support Services Division, include fleet maintenance, training, communications, records management, the crime laboratory, information systems, and the bureau of identification (see Figure 2 for the MSP organizational chart).

Figure 2. Organizational Chart for MSP as of SFY 2006 (a Bureau within DPS – see Fig. 8 for DPS organizational chart)



Current Organization, Expenditures, and Staffing

As of State fiscal year (SFY) 2005 the Maine State Police had 548 authorized full-time equivalent positions, of which 336 were sworn positions ranging from trooper to colonel. The entire Bureau's expenditures were \$55,048,112 and \$58,515,056 respectively in SFY 2005 and 2006, but only the portion of these expenditures assigned to the state police appropriation program (0291) were within the scope of this review.

Table 3. MSP Expenditures

Fund	SFY 2005	SFY 2006
General Fund (010)	\$15,159,004	\$15,441,422
Highway Fund (012)	31,317,867	34,441,813
Special Revenue Fund (014)	6,061,082	6,082,677
Federal Fund (013)	2,510,159	2,549,144
Total for all Funds	\$55,048,112	\$58,515,056

Source: State of Maine MFASIS Data Warehouse

MSP's funding is not directly aligned with its organizational units. Instead it is funded through ten appropriation programs.

MSP is divided into two primary functional divisions—the Operations Division and the Support Services Division—each of which include between 10 and 11 distinct operational units. Unfortunately, the Bureau's funding is not directly aligned with its functions (see org. chart at Figure 2). It receives funding from 10 different appropriation programs, some of which fund single functions, some of which fund broad operations across functions, and some of which fund only a very narrow band of activities within a function (see Table 4 for all of the appropriation programs that fund MSP).⁵

Table 4. Appropriation Programs that Fund the Maine State Police

Appropriation Programs	SFY2005 Expenditures			
	General Fund (010)	Highway Fund (012)	Other Funds	Total
0291 STATE POLICE	\$13,927,652	\$25,222,979	\$3,577,095	\$42,727,726
0293 LIQUOR ENFORCEMENT	681,441		4,121	685,562
0329 MOTOR VEHICLE INSPECTION		976,109		976,109
0546 TRAFFIC SAFETY		874,747		874,747
0547 TURNPIKE ENFORCEMENT			4,255,684	4,255,684
0712 LICENSING AND ENFORCEMENT - PUBLIC SAFETY			734,341	734,341
0715 TRAFFIC SAFETY - COMMERCIAL VEHICLE ENFORCEMENT		3,815,735		3,815,735
0930 FINGERPRINT AND BACKGROUND INFORMATION	503,041			503,041
0981 STATE POLICE - SUPPORT		428,297		428,297
0992 BACKGROUND CHECKS - CERTIFIED NURSING ASSISTANTS	46,870			46,870
TOTAL	\$15,159,004	\$31,317,867	\$8,571,241	\$55,048,112

⁵ See inset in the front cover of this report for a more detailed mapping of appropriation programs to operational units within MSP.

Although MSP is funded through 10 appropriation programs, only the 0291 program was analyzed for this study. The 0291 program receives approximately 80% of all HF dollars for MSP.

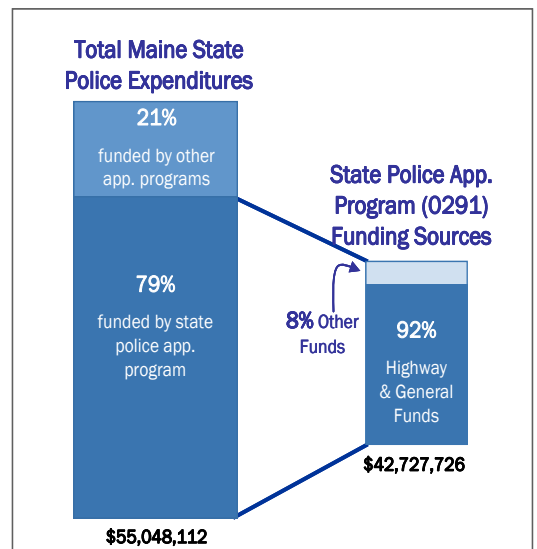
The distinction between the Maine State Police as an operational entity and the state police appropriation program (0291) is critical to understanding the results of OPEGA's analysis. For the remainder of this report the phrase "Maine State Police," or the acronym MSP, will be used only to refer to the broader operational entity. The phrase "state police appropriation program" will be used to refer to the activities that are funded within that specific appropriation program (0291). Note that references to the appropriation program will not be capitalized in the text in order to further distinguish the two.

The State Police Appropriation Program

The majority of Maine State Police's overall expenditures—approximately 79% annually—are funded by the state police appropriation program. This appropriation program channels Federal Expenditure funds, Special Revenue funds, and State General and Highway funds to MSP. State General and Highway funds make up approximately 92% of the funds distributed through the appropriation program, and these two funds have historically shared the funding of this appropriation program through a ratio that is negotiated with each biennial budget. The ratio for SFY 2005 was 63% Highway Fund and 37% General Fund (GF). SFY 2006

The 0291 program gets its funding primarily from a combination of State Highway and General Funds. The proportion of each has historically been determined by a ratio.

Figure 3. Funding for MSP Activities



had a ratio of 65% Highway Fund and 35% General Fund.

Table 5. State Police App. Program (0291) Ratio 1946–2006

State Fiscal Years	% General Fund	% Highway Fund
1946 - 1957	10%	90%
1958 - 1961	50%	50%
1962 - 1989	25%	75%
1990 - 1990	50%	50%
1991 - 1991	23%	77%
1992 - 1992	26%	74%
1993 - 1993	13%	87%
1994 - 1994	12%	88%
1995 - 1995	13%	87%
1996 - 1996	15%	85%
1997 - 1997	20%	80%
1998 - 2001	40%	60%
2002 - 2005	37%	63%
2006 - 2006	35%	65%

Source: Maine Public Laws

Of the state police appropriation program (0291) funding provided by a combination of Highway Fund and General Fund, the Highway Fund has paid anywhere from 50% to 90% over the past fifty years (see Table 5). There has often been contentious debate over what the appropriate General Fund to Highway Fund ratio (often referred to as "the split") is, but the legislative record provides little insight into the reasoning behind shifts in the split. There is a general feeling, in both the Executive and Legislative branches, that the ratio has no relation to the actual split of state police activities, and that changes in the ratio are most directly related to the changes in the financial condition of the two funds.

There has been interest, in the past, in whether the ratio of HF to GF truly reflected the mix of activities funded. Most attempts to address this question have been inconclusive.

In the past, the Legislature's Joint Standing Committee on Transportation has made formal and informal attempts to estimate the portion of activities that can reasonably be attributed to the Highway Fund, but little documentation of these attempts exists. The only formal record of such an attempt is in an AG's opinion from 1980 in which the office refers to a manpower study recently completed by the State Department of Audit at the Legislature's request. The Department of Audit had found, in a letter dated September 26, 1978, that the ratio should be changed from the then existing ratio of 75% Highway Fund to 25% General Fund to a ratio of 65% to 35%.⁶ Unfortunately, the AG's opinion is the only remaining record of this study, so no further information is available about the methods used or basis for conclusions.

Since the Department of Audit's effort, there have been a few informal working groups—made up primarily of Transportation Committee members and Maine State Police staff—that have attempted to estimate what percentage of state police activities are eligible to be paid from the HF, but those attempts have generally been described as ending inconclusively because of failure to agree on essential definitions.

2005	OPEGA review requested
1990's	Informal working groups are inconclusive
1980's	Informal working groups are inconclusive
1978	State Auditor manpower study recommends 65%/35% split

Analysis of Activities Funded by the State Police Appropriation Program (0291)

OPEGA's analysis of Maine State Police activities funded by the state police appropriation program represents a point-in-time estimate based on available data, and on two possible interpretations of HF eligibility. This analysis was completed during a time of significant change within the Maine State Police as it experienced:

- internal reorganization of operational units;
- movement of financial and human resource activities to the new Service Center model;
- development of the State's first regional consolidated communications centers;
- transfer of previously internal information systems staff and responsibilities to the State's new Office of Information Technology; and,
- acquisition and implementation of new software for activity-based time reporting and records management.

This study was completed during a time of significant change within the Maine State Police.

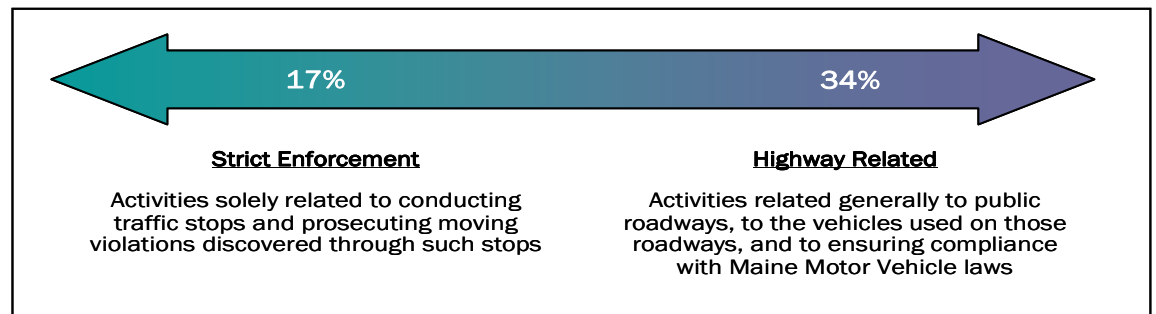
⁶ Op. Me. Att'y Gen. 80-41

Given this, the results of OPEGA's analysis for SFY 2005 and 2006 should not be seen to represent other past or future fiscal years with equal accuracy. In addition, it must be understood that this study only analyzed activities performed for those two fiscal years. There was no attempt to use trending or forecasting to anticipate what Maine State Police activities may be in future fiscal years. Any attempt to forecast future activities would be complicated by the need to consider the response-oriented nature of MSP work, and the built-in capacity and flexibility of MSP to adapt its activities to current needs.

OPEGA estimates that 17%-34% of MSP activities funded through the 0291 appropriation program were eligible to be paid from the HF.

OPEGA analyzed the activities funded by the state police appropriation program (0291) during SFY 2005 and 2006, and found that between 17% and 34% were constitutionally eligible to be paid from the Highway Fund (see Figure 4). These two percentages represent estimated minimum and maximum HF contribution levels based on the definitions of HF eligibility that OPEGA used in this analysis. Of course, estimates based on definitions of HF eligibility other than the ones OPEGA used could result in different minimum and maximum levels.

Figure 4. Results of Analysis of Activities Funded by the State Police Appropriation Program (0291)



The gap between the two percentages is primarily due to three types of activities that are included in the broader definition, but excluded from the narrower. These types of activities are:

1. responses to auto thefts;
2. motor vehicle accident responses; and
3. responses that may have been initiated with a traffic stop, but then required additional action that may not have been traffic related.

An example of the third activity type would be when a trooper pulls a motorist over for speeding and finds the motorist in possession of illegal narcotics. The traffic stop itself may have only taken 15 minutes, but the trooper may have to spend an additional 8 hours fully investigating, documenting, and prosecuting the narcotics possession. Only the 15 minute traffic stop would be considered eligible for HF money under OPEGA's strict enforcement definition, but the entire 8 hours and 15 minutes would be eligible under the broader highway related definition. These multi-event activities are common in MSP work.

Under the current ratio, the HF is paying for approximately 63% of the activities funded by the 0291 appropriation program.

It is clear from OPEGA's analysis that, under both the narrowest and broadest definitions of HF eligibility, the level of activities attributable to the Highway Fund during SFY 2005 and 2006 was significantly less than the 63% the state police appropriation program received during those fiscal years (see Figure 5).

A few specific MSP operational units had HF eligibility levels during SFY 2005 and 2006 that differed noticeably from the actual appropriation levels. These few units actually do very little work that seems to meet the constitutional restriction for Highway Fund expenditures, and when they are factored into the state police appropriation program, they lower the program's overall HF eligibility. They are the Criminal Investigation Divisions, the Crime Lab, and the Special Investigations Unit (including liquor enforcement, gambling control, and executive protection).

Figure 5. State Police HF Eligibility

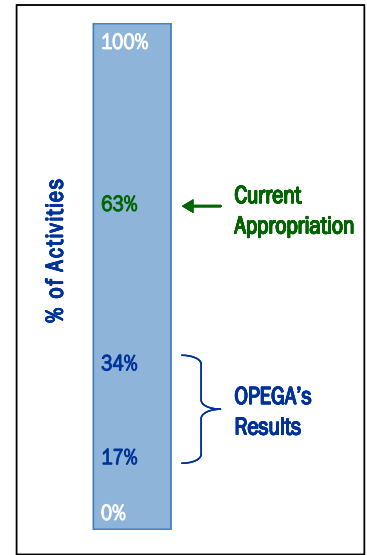


Table 6. Estimated HF Eligibility for Specific MSP Operational Units

MSP Units	SFY05 Unit HF & GF Combined Costs	% Strict Enforcement Activity	% Highway Related Activity	Existing Appropriation
Criminal Investigation Divisions (CIDs I, II, III)	\$4,611,637	<1% *	<1% *	63%
Field Troops (A,C,D,E,F,J)	16,943,024	18%	44%	63%
Crime Lab	1,610,927	<1% *	3%	63%
Bureau of Identification	2,038,846	15%	15%	63%
Special Investigations	1,282,740	<1% *	<1% *	63%
Management Information Systems	2,640,551	31%	44%	63%
Administration	2,122,559	31%	44%	63%
Fleet Maintenance	2,013,272	24%	37%	63%
Communications	3,860,607	21%	48%	63%
Special Services	1,483,640	16%	30%	63%
Access Integrity Unit (AIU)	542,828	31%	44%	63%
Total Costs	\$39,150,631			
Percent Eligibility Weighted By Costs		17%	34%	63%

* Although this unit's primary purpose does not include strict enforcement or highway related work, the unit has the capacity to perform that work as needed. We could not quantify how much eligible work the unit does.

How Other States Fund Their State Police Forces

OPEGA sought information from the National Council of State Legislatures (NCSL), the International Association of Chiefs of Police (IACP), and the New England State Police Administrative Conference (NESPAC) about how other

Some states have highway patrols that are funded entirely with state transportation funds. These highway patrols do not perform the same complex array of services that MSP does.

states fund their state police forces. We found that state police funding mechanisms varied greatly from one state to another, in large part because of differences in the structure of the state police functions, and in the handling of states' transportation related funds.

Many states in the western part of the country have state patrols that are funded entirely with state transportation funds (equivalent to Maine's Highway Fund). However, these states do not usefully compare to Maine because their state patrols—also known as highway patrols—do not perform the same array of complex duties performed by Maine's State Police. Instead, they focus primarily on traffic safety and enforcement.

Some other states do not have a dedicated Highway Fund. Instead, the revenues that would normally go to a Highway Fund simply go to their General Fund.

Alternately, some states that do have complex state police forces, like Maine's, do not struggle with how much transportation funding to appropriate to their state police forces because they either do not have a dedicated Highway Fund, or they handle Highway Fund monies very differently than Maine. A few states avoid having a dedicated Highway Fund by collecting all revenues in their General Funds. In a completely different approach, one state statutorily requires that state agencies requiring transportation funds (including the state police) contract with the state's Department of Transportation for the transportation monies needed.⁷ The contract must include a description of the services to be financed by transportation funds and cost allocation methods and rationale for the portion of costs allocated to those funds.

Analysis: Bureau of Highway Safety

Brief History and Current Activities

The Bureau of Highway Safety (BHS) originated as the Department of Transportation's Bureau of Safety in 1974. It was moved under the supervision of the Department of Public Safety in 1980, and had its name changed to the current title in 1990. BHS exists to manage the State's highway safety program by working with other State and local agencies to coordinate information about highway safety programs and to provide technical and financial assistance in developing and executing those programs.

Because the Bureau is funded primarily through federal highway safety grants, much of its work varies according to changes in federal highway safety objectives. Its current State and federal efforts include:

- Occupant protection—including observational studies to measure seatbelt usage; safety belt education and enforcement campaigns; tools provided to driver safety programs to simulate impaired driving; and, the Maine Driving Dynamics defensive driving program.

The Bureau of Highway Safety (BHS) is funded primarily through federal highway safety grants.

⁷ Michigan Office of the Auditor General, Performance Audit: Use of Transportation Related Funding, Report No. 07-629-05, 2005.

- Speed enforcement—funding dedicated speed enforcement details conducted by State, municipal, and county law enforcement agencies; and assisting law enforcement agencies in acquiring enforcement equipment including lasers, radars, and speed display screens.
- Alcohol and other drug countermeasures—supporting the state funded Implied Consent program that tests drivers suspected of driving under the influence of drugs or alcohol; funding dedicated roadblocks and patrols; training drug recognition experts; and, making Intoxilyzers available statewide.
- Child passenger safety—providing income-eligible vouchers for child safety seats, child safety seat fitting stations, and child passenger safety education.
- Pupil transportation—helping schools acquire safety related equipment for school buses.
- Police traffic services/training—training law enforcement personnel in accident investigation, accident reconstruction, data collection, and evidential breath testing instruments.
- Traffic and accident records systems—collecting and managing traffic and accident data, most notably the ME Crash Reporting System and the federally funded Fatal Analysis Recording System (FARS).

Current Organization, Expenditures, and Staffing

As of SFY 2005 the Bureau of Highway Safety had a staff of five, 3.5 of which were federally funded positions. Total expenditures were \$1,747,597 in SFY 2005, of which \$533,540 was paid from State Highway and Special Revenue Funds, and \$2,435,149 in SFY 2006, of which \$757,870 was paid from State funds (see Table 7 below).

Table 7. BHS Expenditures

Fund	SFY 2005	SFY 2006
Highway Fund (012)	\$384,104	\$412,688
Special Revenue Fund (014)	149,436	345,182
Federal Fund (013)	1,214,057	1,677,279
SFY Total	\$1,747,597	\$2,435,149

Source: State of Maine MFASIS Data Warehouse

The Bureau of Highway Safety received approximately \$384,000, or 22% of it's total funds, from the HF in SFY 2005.

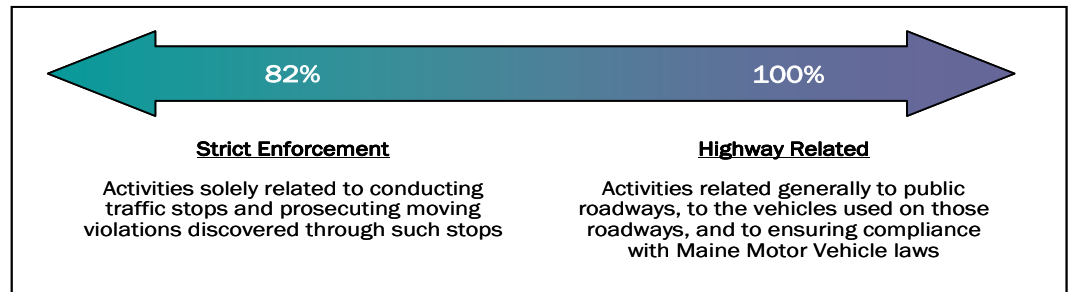
The Bureau of Highway Safety receives its non-federal funds solely and completely through the Highway Safety DPS appropriation program (0457). Maine's Legislature has traditionally appropriated Highway Fund monies to cover 100% of the BHS expenditures that cannot be paid from Federal or Special Revenue Funds. This Highway Fund money is generally enough to cover one full-time position and the State mandated Implied Consent program.

Analysis of Activities

OPEGA estimates that for SFY 2005 and 2006 between 82% and 100% of the BHS's state-funded activities were eligible to be paid from the Highway Fund.

OPEGA found that for SFY 2005 and 2006 between 82% and 100% of the Bureau of Highway Safety's state-funded activities were eligible to be paid from the Highway Fund (see Figure 6).

Figure 6. Results of Analysis of Bureau of Highway Safety Activities (0457)



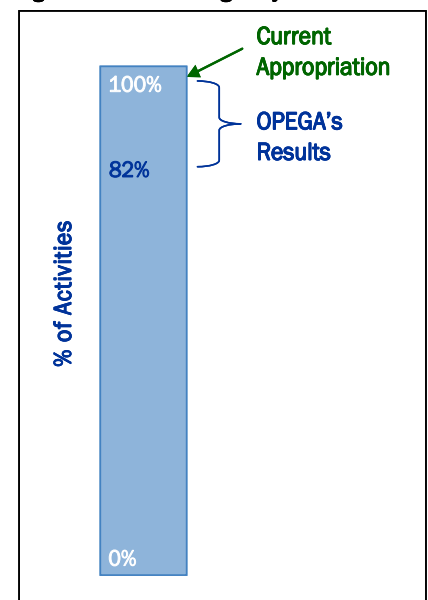
These two percentages represent estimated minimum and maximum HF contribution levels based on the definitions of HF eligibility that OPEGA used in this analysis.

The gap between the two percentages is primarily due to variation in definitions of the word “enforcement.” Maine’s Constitution requires that HF monies be expended only for state enforcement of traffic laws, but what activities constitute enforcement is not clearly specified. Enforcement activities may have traditionally been viewed as only those activities that directly involved catching and prosecuting violations of the law, and this is the definition of enforcement used in OPEGA’s narrower, strict enforcement analysis. However, as enforcement efforts have evolved, they have begun to encompass a broader range of activities including educational and deterrent activities. OPEGA’s highway related definition of HF eligibility relied on this broader view of enforcement for its analysis.

Although OPEGA’s narrower definition indicates that BHS’s SFY 2005 and 2006 activities were eligible for slightly less Highway Fund money than the Bureau actually received, the broader definition allowed that all activities currently being paid from the HF were, in fact, eligible (see Figure 7).

Currently, the HF is paying for 100% of all BHS activities that can not be paid for with Federal or Special Revenue Funds.

Figure 7. BHS HF Eligibility



Analysis: Department of Public Safety Administration

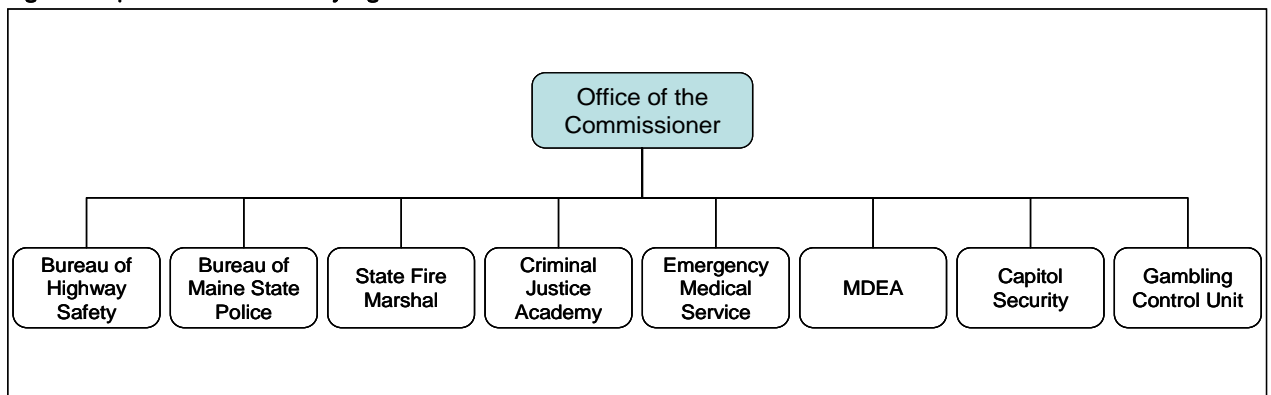
Brief History & Current Activities

The Department of Public Safety's administrative unit consists primarily of the Office of the Commissioner and is responsible for overseeing all 8 of the Department's bureaus.

The Department of Public Safety was established in 1971 and has a current mission of preserving public order and protecting the persons, property, rights, and privileges of all people in the State. The Department's administration consists primarily of the Office of the Commissioner, which is responsible for overseeing, coordinating and supporting the activities of the Department's eight bureaus:

1. Maine State Police – the State's largest police agency.
2. Bureau of Highway Safety – promotes programs and projects that make Maine highways safer.
3. Maine Drug Enforcement Agency – the State's leading agency for coordinated drug enforcement operations.
4. Capitol Security – provides round-the-clock security for most State buildings in Augusta, including the Capitol complex, Riverview facility, and Stevens facility in Hallowell.
5. Maine Criminal Justice Academy – the central training facility for State, county and municipal law enforcement officers and corrections personnel.
6. Office of the State Fire Marshal – Maine's leading fire investigation, prevention and fire research organization.
7. Gambling Control Unit – licenses, registers, inspects, and monitors Hollywood Slots gambling facility in Bangor.
8. Maine Emergency Medical Services – regulates, coordinates, and oversees the State's emergency medical services system.

Figure 8. Department of Public Safety Organizational Chart



DPS administration historically provided all financial and human resource services for the Department's bureaus, but in the fall of 2005 these responsibilities were

transferred to the newly formed Service Center B in Maine's Department of Administrative and Financial Services.

Current Organization, Expenditures, and Staffing

Total expenditures for DPS Administration (appropriation program 0088) were \$2,990,241 in SFY 2005, of which \$758,236 was paid from the Highway Fund.

As of SFY 2005, the DPS Office of the Commissioner had a staff of seven, 2.5 of whom were supported by the State's Highway Fund. Total expenditures were \$2,990,241 in SFY 2005, of which \$758,236 was paid from the Highway Fund, and \$2,660,932 in SFY 2006, of which \$598,142 was paid from the HF (see Table 8).

Table 8. DPS Administration Expenditures

Fund	SFY 2005	SFY 2006
General Fund (010)	\$326,267	\$324,744
Highway Fund (012)	758,236	598,142
Special Revenue Fund (014)	359,582	194,881
Federal Fund (013)	1,546,156	1,543,165
SFY Total	\$2,990,241	\$2,660,932

Source: State of Maine MFASIS Data Warehouse

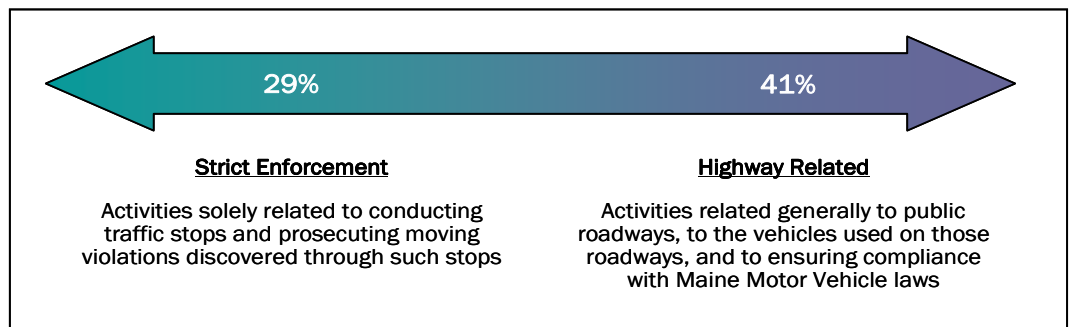
DPS's Office of the Commissioner is funded solely and completely through the administration—public safety appropriation program (0088). This appropriation program currently receives Highway Fund monies to cover two and a half staff positions and some portion of administrative expenditures such as rent and service center charges. Although DPS administration's Highway Fund appropriation is not generally figured as a percentage of total State funds appropriated, in SFY 2005 and 2006 the HF accounted for approximately 64% of the total expenditures that could not be paid for with Federal or Special Revenue Funds.

Analysis of Activities

For SFY 2005 and 2006 OPEGA estimates that 29%-41% of the DPS Administration's state-funded activities were eligible to be paid from the Highway Fund.

OPEGA found that for SFY 2005 and 2006 between 29% and 41% of DPS Administration's state-funded activities were eligible to be paid from the Highway Fund (see Figure 9). As in the analysis for the other two appropriation programs included in this review, these two percentages represent estimated minimum and maximum HF contribution levels based on the definitions of HF eligibility that OPEGA used in this analysis.

Figure 9. Results of Analysis of DPS Administration Activities (0088)

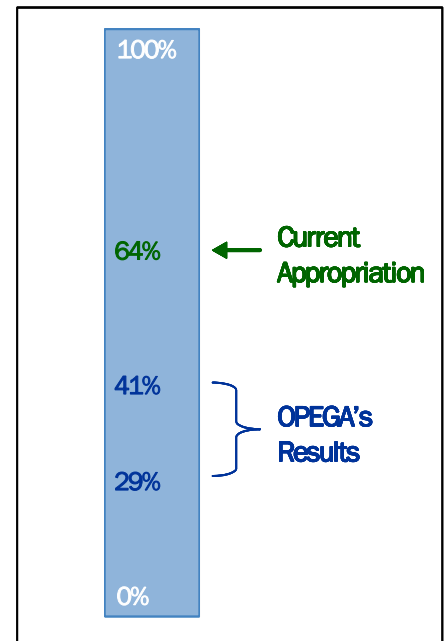


Currently the DPS Administration receives HF monies to pay approximately 64% of all expenditures that can not be paid for with Federal or Special Revenue Funds.

The gap between the two percentages in this case is due simply to the variation that comes from applying the two alternate definitions to the Department's bureaus. Because this appropriation program is concerned with administering the activities of other underlying units, its level of HF eligibility is dependent entirely on the eligibility of those underlying units.

Under the narrower definition, about 29% of DPS Administration's SFY 2005 and 2006 activities were eligible to be paid with Highway Fund money, and under the broader definition 41% were found to be eligible. In this case, both definitions result in a HF eligibility level that is lower than the 64% actually paid with HF in fiscal years 2005 and 2006 (see Figure 10).

Figure 10. DPS Admin. HF Eligibility



Conclusions

In the absence of a clear definition of HF eligibility and reliable activity data, it is not possible to fully and exactly determine which DPS activities are eligible to be paid from the State's Highway Fund.

Implementing managerial cost accounting would make the costs of specific DPS activities transparent, and could significantly simplify the process of identifying the amount of HF monies that should be allocated to those activities.

It is not possible, at this time, to fully and exactly determine which DPS activities and associated costs are eligible to be paid from the State's Highway Fund. OPEGA analyzed available data to arrive at reasonable estimates of HF eligibility, but no decisive eligibility determination or supporting cost allocation can be prepared without two currently unavailable elements:

1. an operational definition of Highway Fund eligibility, and
2. activity data that is closely linked, or can easily be linked, with financial data.

The absence of these two critical elements has led to long-standing uncertainty in DPS and the Legislature about which departmental activities are eligible to be attributed to the Highway Fund. If these elements are not put in place, the question of which Departmental activities should be supported by the HF will likely continue to be argued well into the future, with HF allocations to the Department continuing to be unrelated to the actual activities performed. A long term solution to this issue would require creating an operational definition of HF eligibility and implementing a managerial cost accounting model at DPS to make activity-based cost data continuously available.

The goal of managerial cost accounting is to accumulate, measure, analyze, interpret, and report cost information that can be useful to internal and external parties interested in how an organization uses its resources to meet its objectives. The cost information that would result from such an approach would make the costs of specific DPS activities transparent and could significantly simplify the process of identifying the amount of Highway Fund monies that should be

allocated to those activities. OPEGA has observed there may also be other State agencies which are not currently collecting this type of cost information and which perhaps could benefit from a move toward cost accounting.

The federal government began implementing managerial cost accounting practices across-the-board in the 1990's with the goal of developing the cost information needed to improve federal financial management and decision making. Statement of Federal Financial Accounting Standards (SFFAS) No. 4, Managerial Cost Accounting Concepts and Standards for the Federal Government, described cost information as essential in five areas:

Budgeting and Cost Control	Program activity costs can be used to estimate future costs, and in preparing and reviewing budgets. Cost information provides feedback to executed budgets and can help control and reduce costs and find and avoid waste.
Performance Measurement	Measuring costs facilitates improvements in program efficiency and effectiveness.
Determining Reimbursements and Setting Fees	Cost information is a critical factor in making informed decisions about reimbursement rates and appropriate fees.
Program Evaluation	Costs of resources required by specific programs are an important consideration in making policy decisions concerning authorization, modification, or discontinuation of those programs.
Economic Choice Decisions	Activity costs can assist agencies in making decisions that require cost comparisons among alternatives, such as to perform an activity in-house or contract it out.

Full implementation of a cost accounting model would take time, but could be phased in incrementally, to facilitate significant improvements in transparency and accountability.

Many federal documents exist that describe the steps required to successfully implement managerial cost accounting in a government environment. This would represent a significant effort for the State of Maine, requiring that appropriation programs be clearly linked to activities, that account coding be developed to link costs to activities, and that the associated program activity data be collected. Full implementation would take considerable time, but could be phased in incrementally and would provide for marked improvements in transparency and accountability.

Acknowledgements

OPEGA would like to thank the many individuals within the Department of Public Safety and Department of Administrative and Financial Services' Service Center B who shared their time, knowledge, and experience during the course of this review. Their cooperation and eagerness to help us in this effort provided for much more valuable results.

Appendix A. Full Text of Opinions of the Maine Attorney General

91-8

MICHAEL E. CARPENTER
ATTORNEY GENERAL

VENDEAN V. VAFIADES
CHIEF DEPUTY

Telephone: (207) 289-3661
FAX: (207) 289-3145



STATE OF MAINE
DEPARTMENT OF THE ATTORNEY GENERAL
STATE HOUSE STATION 6
AUGUSTA, MAINE 04333

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DEPUTY, GENERAL GOVERNMENT
CABANNE HOWARD
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FERNAND R. LAROCHELLE
DEPUTY, CRIMINAL
CHRISTOPHER C. LEIGHTON
DEPUTY, HUMAN SERVICES
JEFFREY PIDOT
DEPUTY, NATURAL RESOURCES
THOMAS D. WARREN
DEPUTY, LITIGATION
STEPHEN L. WESSLER
DEPUTY, CONSUMER/ANTITRUST
BRIAN MACMASTER
DIRECTOR, INVESTIGATIONS

June 5, 1991

Senator N. Paul Gauvreau, Chair
Representative Patrick E. Paradis, Chair
Joint Standing Committee on Judiciary
State House Station 115
Augusta, Maine 04333

Dear Senator Gauvreau and Representative Paradis:

You have inquired whether it would be consistent with the provisions of Article IX, Section 19 of the Maine Constitution for the Legislature to appropriate funds from the General Highway Fund to cover the expenses of the District Attorneys' offices in the prosecution of traffic offenses. For the reasons which follow, it is the opinion of this Department that the utilization of the General Highway Fund for this purpose would not be unconstitutional.

Article IX, Section 19 of the Maine Constitution provides:

All revenues derived from fees, excises and license taxes relating to registration, operation and use of vehicles on public highways, and to fuels used for the propulsion of such vehicles shall be expended solely for cost of administration, statutory refunds and adjustments, payment of debts and liabilities incurred in construction and reconstruction of highways and bridges, the cost of construction, reconstruction, maintenance and repair of public highways and bridges under the

- 2 -

direction and supervision of a state department having jurisdiction over such highways and bridges and expense for state enforcement of traffic laws and shall not be diverted for any purpose, provided that these limitations shall not apply to revenue from an excise tax on motor vehicles imposed in lieu of personal property tax.

The question which you raise is whether the costs of prosecuting traffic violations by the District Attorneys' offices can be considered an "expense for State enforcement of traffic laws" within the meaning of this provision.

This question is similar to one which was posed to this Department twice before, when it was asked whether the General Highway Fund could be used to fund the expenses of the State Police. In response to those inquiries, the Department indicated that the activities of the State Police in enforcing the State traffic laws clearly fell within the purview of the constitutional provision, and that the General Highway Fund could be used to cover the expenses of the State Police, but only to the extent that those expenses were attributable to such enforcement. Op. Me. Att'y Gen. 81-16; Op. Me. Att'y Gen. 80-41 (copies attached).

There does not appear to be any difference for purposes of the constitutional provision between the activities of the State Police in enforcing the traffic laws of the State and the activities of the District Attorneys' offices in bringing traffic prosecutions, in which the complaining officer may very well be a member of the State Police. That being the case, this Department can see no reason why the General Highway Fund could not be used to fund such expenses.


It should be emphasized, however, that, consistent with the attached prior Opinions of this Department, the constitutional ability of the Legislature to fund the District Attorneys' offices out of the General Highway Fund is limited to that portion of the District Attorneys' budgets which are fairly attributable to traffic law enforcement. Thus, if the Legislature determines to use the General Highway Fund for this purpose, it is constitutionally obligated to make a good faith inquiry and estimate of the portion of the District Attorneys' expenses attributable to this purpose, just as it has done with regard to the budget of the State Police. In making this judgment, the Legislature should be mindful of the fact that the Supreme Judicial Court has on several occasions been quite firm that the General Highway Fund may not be utilized for purposes which are not directly related to those enumerated in

- 3 -

Article IX, Section 19. Opinion of the Justices, 157 Me. 104, 110-111 (1961); Opinion of the Justices, 155 Me. 138-139 (1959); Opinion of the Justices, 152 Me. 449, 455-456 (1957).

I hope the foregoing answers your question. Please feel free to reinquire if further clarification is necessary.

Sincerely,


MICHAEL E. CARPENTER
Attorney General

MEC:sw

81-16

JAMES E. TIERNEY
ATTORNEY GENERAL



STATE OF MAINE
DEPARTMENT OF THE ATTORNEY GENERAL
AUGUSTA, MAINE 04333

February 11, 1981

The Honorable George A. Carroll
State Representative
State House
Augusta, Maine 04333

Dear Representative Carroll:

This will respond to your inquiry regarding the activities of the State Police which may be financed from the General Highway Fund.

The question you raise was answered in an opinion issued by this Office last year. See Op. Atty. Gen. #80-41. As noted in that opinion, Section 19 of Article IX of the Maine Constitution requires that General Highway Fund revenues "be expended solely" for specifically enumerated purposes including the "expense for state enforcement of traffic laws" and "not be diverted for any [other] purpose. . . ." The constitutional mandate is thus quite clear. General Highway Fund revenues may fund only that portion of the State Police budget which is utilized for the enforcement of the traffic laws.

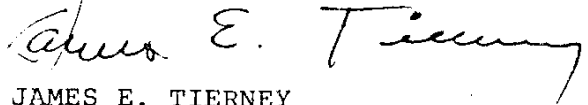
You have also expressed concern regarding the implementation of the constitutional requirement with respect to the State Police. Put most simply, a determination of the percentage of the State Police budget actually utilized for traffic enforcement is a question of fact which cannot be resolved in a legal opinion. In our view, the Constitution contemplates that the Legislature will make a good faith resolution of this question and that the appropriations from the Highway Fund will be in accordance with its factual conclusions. In short, insuring compliance with art. IX, § 19 of the Maine

- 2 -

Constitution is in the first instance the responsibility of the Legislature.

A copy of our prior opinion, which deals with these questions in more detail, is enclosed. I hope this information is helpful.

Sincerely,



JAMES E. TIERNEY
Attorney General

Enclosure

cc: Honorable David G. Huber, Chairman
Honorable Michael D. Pearson, Chairman
Joint Standing Committee on Appropriations and Financial Affairs

80-41

RICHARD S. COHEN
ATTORNEY GENERAL



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DEPARTMENT OF THE ATTORNEY GENERAL
AUGUSTA, MAINE 04333

February 21, 1980

Senator Jerome Emerson, Chairman
Representative George Carroll, Chairman
Joint Committee on Transportation
State House
Augusta, Maine 04333

Re: Allocations from the General Highway Fund for the State Police

Gentlemen:

This responds to your February 15, 1980 request for an opinion from this office as to whether the Legislature is required, by reason of Article IX, Section 19 of the Maine Constitution, to adjust the existing funding ratio for the State Police as between the General Highway Fund and the General Fund. For the reasons explained below, we are of the opinion that the Legislature is required to adjust the present ratio if, but only if, it determines that the proportion of expenses of the State Police presently funded from the General Highway Fund exceeds those attributable to state enforcement of traffic laws.

As you point out, Section 19 of Article IX of the Maine Constitution provides that General Highway Fund revenues "shall be expended solely for" specifically enumerated purposes including the "expense for state enforcement of traffic laws" and "shall not be diverted for any [other] purpose" This constitutional provision has been strictly construed by our Supreme Judicial Court, which has refused to allow uses of highway funds even where those uses were indirectly related to a highway construction program. See, Opinion of the Justices, 152 Me. 449, 455-56 (1957); Opinion of the Justices, 155 Me. 125, 138-139 (1959) and Opinion of the Justices, 157 Me. 104, 110-111 (1961). Because we are dealing with a provision of the Maine Constitution, the Legislature is obviously bound to adhere to the prohibition against diverting General Highway Funds to unauthorized purposes.

However, the question you have raised, as we understand it, is not what the Constitution means or whether the Legislature must comply with it, but how it should be implemented. You explain in your letter that the 108th Legislature directed the State Auditor

Page 2

to "evaluate and determine the portion of State Police activities related to highway transportation" so that the Legislature "could consider on a factual basis that portion of the State Police budget which should be supported from the Highway Fund and General Fund respectively." P.L. 1977, ch. 423, Part B, §5. Pursuant to this direction, the State Auditor determined, by letter dated September 26, 1978, that the then existing ratio for State Police funding of 75% General Highway Fund to 25% General Fund should be changed to 65%/35% as a result of a manpower study of the State Police.

The essence of the question posed in your letter, we think, is whether the Committee on Transportation is constitutionally bound by the State Auditor's determination. In our opinion it is not. It is clear that the Legislature (not the State Auditor) has the responsibility of how to allocate revenues from the General Highway Fund. 23 M.R.S.A. §1651. In our opinion the 108th Legislature did not delegate this responsibility to the State Auditor. Rather, we interpret the 1977 law as directing the State Auditor to assist the Legislature to better enable the Legislature to make a determination.

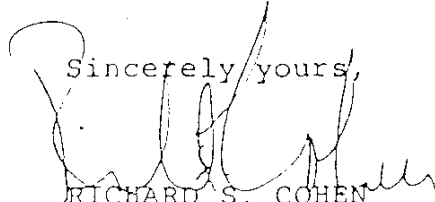
Moreover, even if one were to interpret P.L. 1977, c. 423 as delegating to the State Auditor the determination of how much of the revenues of the General Highway Fund should be allocated for State Police activities, we do not consider that delegation to be binding on the 109th Legislature. It is well established that the Legislature may enact any law of any character or on any subject unless prohibited by the Constitution. Baxter v. Waterville Sewerage District, 146 Me. 211, 215, 79 A.2d 585, 588 (1951); Jones v. Maine State Highway Comm., Me., 238 A.2d 226, 230 (1968). A corollary to the foregoing is that "a legislature cannot, through the enactment of statutes, preclude future legislatures from altering or repealing those statutes. In short, the Legislature clearly has broad authority to depart from self-imposed restrictions." Op. Atty. Gen., April 12, 1979 at 15. Baxter v. Waterville Sewerage District, *supra*; Jones v. Maine State Highway Comm., *supra*. Thus the 109th Legislature has the constitutional power to alter any delegation which may have been made by a previous legislature with respect to allocations from the General Highway Fund revenues.

In the final analysis, then, it is the task of the 109th Legislature to determine whether adjustments are needed to the present funding ratios for the State Police in order to comply with Section 19 of Article IX of the Maine Constitution. If the Legislature determines in good faith that the State Auditor's judgment concerning the allocation of the expenses of the State Police is not accurate and that the existing ratio continues to be appropriate, then it is fully within the power of the Legislature to make that determination. If, on the other hand, the Legislature determines that the State Auditor's evaluation of the funding ratios is accurate, then the Legislature, in conformity with Article IX, Section 19, should change the existing funding ratios.

Page 3

Please call upon me if I can be of any further assistance in this matter.

Sincerely yours,



RICHARD S. COHEN
Attorney General

RSC:jg

cc: Honorable Joseph E. Brennan
David G. Huber, Chairman Appropriations Committee
Michael D. Pearson, Chairman Appropriations Committee